

HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LEWIS DEAN ARMSTRONG,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Case No. 2:20-cv-00609-RAJ

ORDER GRANTING UNITED
STATES' MOTION TO DISMISS
PETITIONER'S SECTION 2255
MOTION WITHOUT PREJUDICE

I. INTRODUCTION

Before the Court is Respondent's Motion to Dismiss Petitioner's Section 2255 Motion Without Prejudice. Dkt. # 6. For the reasons below, the motion is **GRANTED**.

II. BACKGROUND

Petitioner Lewis Dean Armstrong was previously charged and convicted for aggravated sexual abuse of a child in violation of 18 U.S.C. §§ 1153, 2241(c), 2246(2)(B). *U.S. v. Armstrong*, No. 2:13-cr-00322-RAJ-1 (W.D. Wash. June 19, 2020) (Dkt. ## 13, 52). At sentencing, Judge John C. Coughenour sentenced Mr. Armstrong to a 20-year term of incarceration, with a lifetime of supervised release to follow. *Id.* (Dkt. # 115). Judge Coughenour determined that the thirty-year mandatory sentence would be unconstitutional as applied to this case. *Id.* (Dkt. # 117).

Both Mr. Armstrong and the government appealed the judgment to the Ninth Circuit Court of Appeals. *Id.* (Dkt. ## 118, 125). The Ninth Circuit reversed the

1 judgment, in part, holding that the “district court erred in determining that the mandatory
2 minimum sentence under 18 U.S.C. § 2241(c) violated the Eighth Amendment” and that
3 the mandatory minimum sentence was in fact proportionate. *Id.* (Dkt. # 218 at 5-6). Two
4 months later, the Ninth Circuit issued its mandate. *Id.* (Dkt. # 221). Following appeal,
5 this Court has not yet resentenced Mr. Armstrong or amended his previous judgment.
6 Mr. Armstrong’s resentencing is currently scheduled for October 23, 2020.

7 After receiving the Ninth Circuit’s decision but before receiving the mandate, Mr.
8 Armstrong filed this action, moving to vacate, set aside, or correct his sentence under 18
9 U.S.C. § 2255. Dkt. # 1. The government argues that the Section 2255 motion is
10 premature and moves to dismiss the motion without prejudice.

11 III. DISCUSSION

12 The Ninth Circuit’s decision in *United States v. LaFromboise*, 427 F.3d 680, 686
13 (9th Cir. 2005), provides clear guidance here:

14 Until the district court enters an amended judgment of conviction, [the
15 petitioner]’s § 2255 motion is in fact premature, rather than untimely. In
16 *Feldman v. Henman*, we held that federal prisoners must exhaust appellate
17 review prior to filing for habeas relief in the district court. 815 F.2d 1318,
18 1321 (9th Cir. 1987). The district court “will not review a section 2255
19 motion until the direct appeal is resolved.” *United States v. Pirro*, 104 F.3d
20 297, 298 (9th Cir. 1997). [The petitioner]’s [re]sentenc[ing] on the counts
21 of conviction, yet to be determined by the district court, will be subject to
direct appeal. *Streit*, 17 F.3d at 308. Once the new judgment is entered, [the
petitioner] may or may not choose to appeal-but until direct appellate
review is exhausted the district court may not entertain a motion for habeas
relief. *Feldman*, 815 F.2d at 1320-21.

22 Since the Ninth Circuit reversed and remanded to this Court, Mr. Armstrong has yet to be
23 resentenced, and the Court has not yet amended its previous judgment. Once those
24 events occur, Mr. Armstrong will be able to challenge the judgment by direct appeal if he
25 chooses. After direct appellate review is exhausted, Mr. Armstrong’s motion will
26 become ripe for the Court. Until then, it is premature and dismissed without prejudice.

1 **IV. CONCLUSION**

2 For the reasons stated above, the Court **GRANTS** Respondent's Motion to
3 Dismiss Petitioner's Section 2255 Motion Without Prejudice. Dkt. # 6.

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5 DATED this 14th day of September, 2020.

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9 The Honorable Richard A. Jones
10 United States District Judge
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